United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,572

JEAN-CLAUDE PORSON,
Appellant

v.

ASSOCIATION INTERNATIONALE
DES INTERPRETES DE CONFERENCE,
Appellee

Appeal from an Order of the United States District Court
for the District of Columbia

BRIEF FOR APPELLEE

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE ISSUES INVOLVED

The only issue involved in this case is whether or not the Appellee was subject to the jurisdiction of the District of Columbia, and therefore could valid service be obtained on the corporation in the District of Columbia by serving an officer of the corporation?

THIS CASE HAS NOT BEEN BEFORE
THE COURT HERETOFORE

STATEMENT OF THE CASE

The corporate Appellee was organized on November 11, 1953 in Paris, France. It was organized under a French law covering non-profit organizations which became effective in France on July 1, 1901. The corporate Appellee has headquarters in Paris, France but has no other office, nor any headquarters or branch offices anywhere else. It does not transact business in the District of Columbia. It is a professional association of conference interpreters, and its principal function is to determine the qualifications and standards of the profession, and to furnish information concerning the profession. Although there are times when conference interpreters perform services in the District of Columbia, such services are only performed on the basis of contracts between the interpreters and the organization seeking their services. The appellee association does not make contracts for its members, nor does it participate in making such contracts (Joint Appendix 8 and 9).

ARGUMENT

The Appellant apparently relies upon Rule 4(d)(3) of the Federal Rules of Civil Procedure, and does not seek to discuss or even consider the real problems which are created by the requirement that the agent served must be authorized by appointment or by law to receive service of process.

No attempt is made by the Appellant to establish any authorization by appointment, and so we presume that he is contending that there is some law which allows him to legally serve the Appellee.

The District of Columbia Code, Section 13-334, provides as follows:

"§ 13-334. Service on foreign corporations

"(a) In an action against a foreign corporation doing business in the District, process may be served on the agent of the corporation or person conducting its business, or, when he is absent and cannot be found, by leaving a copy at the principal place of business in the District, or, where there is no such place of business, by leaving a copy at the place of business or residence of the agent in the District, and that service is effectual to bring the corporation before the court.

"(b) When a foreign corporation transacts business in the District without having a place of business or resident agent therein, service upon any officer or employee of the corporation in the District is effectual as to actions growing out of contracts entered into or to be performed, in whole or in part, in the District of Columbia or growing out of any tort committed in the District."

A reading of the Code shows that the section is concerned with two types of activity by a foreign corporation. These activities are quite distinct. Subsection (a) relates to a situation where the foreign corporation carries on a consistent pattern of regular business activity within the jurisdiction. It provides that in such a situation the foreign corporation, upon proper service, shall be subject to the jurisdiction of the District of Columbia courts, and not merely for suits arising out of its activities in the District of Columbia.—*Goldberg v. Southern Builders*, 87 U.S. App. D.C. 191, 184 Fed.2d 345.

The second subsection—(b)—was intended to cover situations where the foreign corporation was not doing business within the District of Columbia in a regular manner, and it covers situations

where the contracts are only casual and irregular, and not sufficient to bring it within the ambit of subsection (a). It is in such a situation that subsection (b) applies and, if the foreign corporation enters into or performs a contract in the District of Columbia, or commits a tort in the District of Columbia, it will be subject to the jurisdiction of the District of Columbia courts with regard to suits growing out of the contract or tort (see *Goldberg v. Southern Builders, supra;* and *Washington v. Hospital Service Plan of New Jersey,* 120 U.S. App. D.C. 211, 345 Fed.2d 105). In other words, this subsection (b) is not confined to an established custom of doing business or a general agency, but it applies to suits growing out of contracts entered into or to be performed in whole or in part in the District of Columbia.–*Berkeley v. Culley,* 42 App. D.C. 140.

There can be no problem, we think, about the fact that the corporation was not doing business in the District of Columbia. We agree that each case is to be considered and decided upon its own facts and circumstances.–*Chase Bag Co. v. Munson Steamship Line,* 54 App. D.C. 169, 295 Fed. 990.

The business done must be sufficient to warrant the inference that the foreign corporation is present in the jurisdiction of the process. In other words, the concept of doing business is the maintenance within the jurisdiction of a regular, continuous course of business activities.–*Frene v. Louisville Cement Co.,* 77 U.S. App. D.C. 129, 134 Fed.2d 511.

The real test of whether a foreign corporation is doing business in the District of Columbia is one of practicality, reasonableness and fairness.–*Byrd v. Norwalk & Western Railroad Co.,* (D.C. Appeals, 1963), 149 A.2d 651.

When a foreign corporation is served with process it may move to quash the service of process on the grounds that it was not doing

business in the District of Columbia; and, where such motions are made by the attorneys for the corporation appearing especially for the purpose of the motion and for no other purpose whatsoever, the corporation does not subject itself to the suit.—*Whitaker v. Macfadden Publications,* 70 App. D.C. 165, 105 Fed.2d 44.

In *Read v. Lasalle Extension University*, 81 U.S. App. D.C. 177, 156 Fed.2d 575, it was held that the question of whether good service has been made may be raised by a motion to quash the service of the summons.

CONCLUSION

Under the law, as shown under Section 13-334 of the Code of Laws for the District of Columbia, in order to sustain the jurisdiction over a foreign corporation, it must be shown that the corporation is engaged in business in the District of Columbia—unless the foreign corporation is sued upon some contract entered into or to be performed in whole or in part in the District of Columbia, or where the corporation is sued by reason of a tort committed in the District of Columbia.

In the case at bar it is obvious that the corporation was not engaged generally in business in the District of Columbia, it made no contracts in the District of Columbia, and it committed no tort in the District of Columbia, and therefore Section 13-334, subsection (b), could not apply.

The Appellant's attempt to prove good service under Rule 4(d)(3) of the Federal Rules of Civil Procedure does not meet the test laid down in the statutes.

Respectfully submitted,

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BRIEF FOR APPELLANT

IN THE

UNITED STATES COURT OF APPEALS

For the District of Columbia

No. 22572

JEAN-CLAUDE PORSON, Appellant

v.

ASSOCIATION INTERNATIONALE DES

INTERPRETES DE CONFERENCE, Appellee

Appeal from an Order of the United States District Court

for the District of Columbia

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IN THE

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No. 22572

JEAN-CLAUDE PORSON, Appellant

v.

ASSOCIATION INTERNATIONALE DES

INTERPRETES DE CONFERENCE, Appellee

Appeal from an Order of the United States District Court

For the District of Columbia

STATEMENT OF ISSUES

The only issue is whether the Court erred in quashing service of process when, pursuant to Rule 4(d)(3) of the Federal Rules of Civil Procedure, it was effected personally within the jurisdiction upon the Vice-President for the Western Hemisphere of the defendant foreign corporation. This matter has not previously been before this Court.

STATEMENT OF THE CASE

Appellee AIIC, co-defendant below, was served with process in this action pursuant to Rule 4(d)(3) of the Federal Rules of Civil Procedure when copies of the summons and complaint were delivered by the U. S. Marshal within the District of Columbia to Claude Badoux, a Vice-President of AIIC, who resides within the District of Columbia.

Appellee AIIC's motion to quash service of process as to it was granted by order of the U. S. District Court on October 10, 1968. This appeal is taken from that order.

ARGUMENT

Rule 4(d)(3) of the Federal Rules of Civil Procedure makes the following provision for service of a summons on a domestic or foreign corporation:

"(3) Upon a domestic or foreign corporation or upon a part-

nership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The foregoing rule was complied with in every respect. Personal service within the District of Columbia was effected on Claude Badoux, a resident Vice-President of the foreign corporate co-defendant, appellee herein. Mr. Badoux is the corporate officer most likely to apprise his fellow officers of AIIC of the facts of litigation. Mr. Badoux is the most appropriate agent for service of process in this particular matter because he is also an officer of the co-defendant TAALS which has appeared herein through the same counsel as AIIC and is, therefore, the man most likely to be aware of dealings between the two co-defendants respecting the libel which is the subject of the complaint.

CONCLUSION

The order quashing service of process on appellee AIIC should be overruled, and AIIC should be reinstated as a party defendant properly before the U. S. District Court for the District of Columbia.

SIGNED BYRON N. SCOTT

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